

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:18 CV 322

IRENE WARREN KENT,)
Administratrix of the Estate of Michele)
Quantele Smiley,)

Plaintiff,)

v.)

VAN DUNCAN, in his official capacity)
as Sheriff of Buncombe County;)

WESTERN SURETY COMPANY, as)
surety for the Sheriff; CHARLES J.)

WILHELM, in his official and)
individual capacity; JEFFREY LEON)

LITTRELL, in his official and)
individual capacity; THOMAS)

CHRISTOPHER (“CHRIS”) BARBER,)
in his official and individual capacity;)

RYAN PATRICK ZABLOUDIL, in his)
official and individual capacity;)

MICHAEL CORN, in his official and)
individual capacity; EDWARD F.)

PARKER, in his official and individual)
capacity; MEGHAN T. RIDDLE, in her)

official and individual capacity; TINA)
COX MILLER, LPN; and)

SOUTHEAST CORRECTIONAL)
MEDICAL GROUP, PLLC,)

Defendants.)

**PLAINTIFF’S MOTION FOR
APPOINTMENT OF
GUARDIAN AD LITEM**

NOW COMES Plaintiff Irene Warren Kent, Administratrix of the Estate of Michele Quantele Smiley (“Plaintiff”), and hereby moves the Court for appointment

of John C. Cloninger as guardian ad litem for the minor beneficiaries concerning the court's review of two proposed wrongful death settlements, pursuant to N.C. Gen. Stat. § 28A-13-3(a)(23).

In support of this Motion, and pursuant to LCvR 7.1 and the Pretrial Order and Case Management Plan (Doc 21), Plaintiff shows as follows:

Factual Background

1. This action arose from the October 6, 2017 death of Michele Smiley at the Buncombe County Detention Center. Plaintiff has alleged claims against the Defendants in this action for wrongful death, deliberate indifference to urgent medical needs under the 14th Amendment, and medical malpractice. Plaintiff's claims arise from the Defendants' alleged failure to provide Michele Smiley with emergency medical treatment or transportation to the hospital for such treatment while she was undergoing a severe drug overdose during her detention, which resulted in her death.

2. Michele Smiley was 34 years old at the time of her death. She is survived by six children, five of whom are minors. Plaintiff is Michele's grandmother, and she is the duly appointed administrator of Michele's estate.

3. On September 10, 2019, the parties and their counsel attended a mediated settlement conference. At the mediation, Plaintiff entered into a confidential settlement agreement with Defendants Miller and Southeast

Correctional Medical Group, PLLC.

4. Following the mediation, Plaintiff's counsel continued negotiations with counsel for the Defendant Sheriff of Buncombe County and, on October 22, 2019, Plaintiff reached a settlement agreement with the Sheriff, his detention officers, and his surety.

Argument

5. This court has the authority to appoint a guardian ad litem to protect the interests of minors and incompetents. *See* Fed. R. Civ. P. 17(c).

6. A court should appoint a guardian ad litem where there is a conflict of interest between a minor and his or her representative. *Gardner v. Parson*, 874 F.2d 131, 138-39 (3rd Cir. 1989). In this case, the court should appoint a guardian ad litem because a potential conflict of interests exists between the five minor beneficiaries of the Estate of Michele Quantele Smiley and their legal guardian, the Plaintiff, during the court's review of two proposed wrongful death settlements with the Defendants, pursuant to N.C. Gen. Stat. § 28A-13-3(a)(23).

7. John C. Cloninger has agreed to serve as guardian ad litem in this action to represent the interests of the minor beneficiaries concerning the proposed settlements. Mr. Cloninger is currently a member in the Hensley Cloninger, P.C. law firm in Asheville. He has practiced law in North Carolina for over 38 years, including cases in state and federal courts, since graduating from the University of

North Carolina School of Law in 1981. He has extensive experience representing clients, as plaintiffs and defendants, in litigation involving personal injury claims, medical malpractice and wrongful death. Mr. Cloninger has requested a fee for his services at the rate of \$350.00 per hour, and Plaintiff has agreed to pay for his services at this rate out of the settlement proceeds.

8. Following the appointment of a guardian ad litem, Plaintiff, through the undersigned counsel, will submit motions to the court to approve the above-described settlement agreements that have been made.

9. Counsel for Plaintiff have contacted counsel for the Defendants, who have indicated that they consent to this motion.

WHEREFORE, Plaintiff requests that John C. Cloninger be appointed as guardian ad litem for the five minor beneficiaries of the Estate of Michele Quantele Smiley, and grant such other and further relief as may be just and proper.

This the 30th day of October, 2019.

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